



2011

## Basic Employee Relations Overview

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# Introduction

- Topics covered today:
  - Leave Administration
  - Probationary Employees
  - Performance Management
  - Handling Conduct & Discipline Issues
  - Medical Issues
  - Appeal Processes

# Goals for this Overview

- Gain more confidence & knowledge.
- Provide basic information related to Employee Relations topics.
- Cover some “do’s & don’ts”.
- Interact with your colleagues and establish a dialogue with peers.

# Employee Relations is a Team Sport

Employee Relations actions cannot be effectively managed by one person. It takes a team of professionals to properly address all aspects of the Employee Relations process.

## Key Players include:

- ER Specialists
- EEO Specialists
- Agency Legal Staff
- Supervisors and Managers
- Employees

# “Who Wants to be an ER Millionaire?”



# Employee Relations Millionaire



Employee Relations includes which of the following?

A. Advising Supervisors

B. MSPB Appeals

C. Drafting Disciplinary letters

D. all of the Above

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# Employee Relations Millionaire



Employee Relations includes which of the following?

A. Advising Supervisors

B. MSPB Appeals

C. Drafting Disciplinary letters

D. All of the Above

# ATTENDANCE



# Annual Leave Accrual Rates

	<u><b>Employee with Less than 3 years of service</b></u>	<u><b>Employee with 3 years but less than 15 years of service</b></u>	<u><b>Employee with 15 or more years of service</b></u>
<u><b>Full-time employees</b></u>	½ day (4 hours) for each pay period	¾ day (6 hours) for each pay period	1 day (8 hours) for each pay period
<u><b>Part-time employees</b></u>	1 hour of annual leave for each 20 hours in a pay status	1 hour of annual leave for each 13 hours in a pay status	1 hour of annual leave for each 10 hours in a pay status

# Requesting & Granting Annual Leave

- When an annual leave request is not submitted in advance, employees will notify appropriate approving officials and verbally apply for annual leave on the first day of any emergency or unplanned absence from duty.
- Written application must be submitted within the pay period the employee returns to duty or as required by the supervisor.
- **Annual leave is granted at the discretion of the supervisor.**
- Check your CBA for further guidance if applicable

# Advance Annual Leave

- Supervisors may grant advance annual leave consistent with agency policy.
- The amount of annual leave that may be advanced is limited to the amount of annual leave an employee would accrue in the remainder of the leave year.
- **Employees do not have an entitlement to advanced annual leave.**
- In most cases, when an employee who is indebted for advance annual leave separates from Federal service, he or she is required to refund the amount of advance leave for which he or she is indebted.

# Annual Leave Ceilings

Maximum Annual Leave That May Be Carried Over into the New Leave Year	
Federal Employees Stationed within the United States	<b>30 days (240 hours)</b>
Federal Employees Stationed Overseas	<b>45 days (360 hours)</b>
Members of the Senior Executive Service, Senior-Level and Scientific and Professional Employees	<b>90 days (720 hours)</b>

# Sick Leave Accrual

<b>Full-time Employees</b>	1/2 day (4 hours) for each biweekly pay period.
<b>Part-time Employees</b>	1 hour for each 20 hours in a pay status.

- There are no limits on the amount of sick leave that can be accumulated.
- Unused sick leave accumulated by employees covered by the Civil Service Retirement System will be used in the calculation of their annuities.
- Unused sick leave accumulated by employees covered by the Federal Employees Retirement System will also be used in the calculation of their annuities following the enactment of the National Defense Authorization Act signed in 2009.

# Requesting Sick Leave

- An employee must request sick leave within such time limits as the agency may require.
- An agency may require employees to request advance approval for sick leave for their own or a family member's medical, dental, or optical examination or treatment.



# Granting Sick Leave

- An agency may grant sick leave only when supported by evidence administratively acceptable by the agency.
- Self-certification is generally acceptable, however for absences in excess of 3 days, many agency's require a medical certificate or other administratively acceptable evidence.
- For bargaining unit employees - check your Agency's collective bargaining agreement.

# Advanced Sick Leave

- At the discretion of the agency, a maximum of 30 days of sick leave (to a full-time employee) at the beginning of leave year or at any time thereafter when required of the situation for a serious disability or ailment of the employee, family member, or for purposes relating to the adoption of a child.



# Advanced Sick Leave (cont)

- If an employee who is indebted for advance sick leave separates from Federal service, he or she is required to repay the agency by:
  - Refunding the amount of unearned leave, and/or
  - Having the agency deduct the amount owed from any pay due to the employee
- If an employee dies, retires on disability, or separates as a result of a disability, he or she does not have to repay the debt

# Sick Leave Definition of Family Member

A *Family Member*, for all sick leave uses, is defined as

- Spouse, and parents thereof
- Children, including adopted children, and spouses thereof
- Parents
- Brothers and sisters, and spouses thereof
- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

# Administrative Leave

- An absence from duty administratively authorized, without loss of pay and without charge to leave.
- Supervisors have the discretionary authority to give up to one hour of administrative leave, though typically administrative leave is used in special situations.

# Leave Without Pay (LWOP)

Leave without pay (LWOP) is a temporary *nonpaid* status and absence from duty that, in some cases, is granted at the employee's request. In most instances, granting LWOP is a matter of ***supervisory discretion*** and may be limited by agency internal policy. Employees may have an entitlement to LWOP in certain circumstances governed by:

- The Family and Medical Leave Act of 1993 (FMLA)
- The Uniformed Services Employment and Reemployment Rights Act of 1994

Remember – LWOP is an approved absence!

# Leave Without Pay (cont)

- Executive Order 5396, July 17, 1930, provides that disabled veterans are entitled to LWOP for necessary medical treatment.
- Employees may not be in a pay status while receiving workers' compensation payments from the Department of Labor.

# Absence Without Leave (AWOL)

- AWOL is a non-pay status and covers any absence from duty which has not been approved
- An agency may discipline an employee who is AWOL. The decision to take such action is at the discretion of the agency, after consideration of the facts and circumstances
- With regard to employees who do not demonstrate consistent attendance, employees and supervisors should discuss the circumstances of the absence in a timely manner.

# Leave Restriction Letters

- A leave restriction letter is a non-disciplinary letter to the employee that conveys the following information:
  - The supervisor's expectations regarding leave usage.
  - Specific information about leave balances and/or specific dates when employee has not followed proper procedure or the pattern of leave abuse.
  - Your organization's leave procedures that they are required to follow.
  - The period of restriction.
  - Consequences of not following the procedures in future.

# Managing Problem Employees: The ABC's of ER





# ER Concerns

- Failure to take action!
- Untimely action.
- Disparate treatment.
- Relying on factors not in the proposal or decision.
- Not applying a progressive discipline approach where appropriate.
- Not considering all aggravating *and mitigating* factors.
- Changing the rules or lacking consistency across the Agency.
- Relying on a penalty guide that is too general.



# **“Is it Performance or Conduct?”**

## Is it performance or is it conduct?

A journey-level automobile mechanic is having trouble installing tires on automobiles. He is not tightening the lug nuts properly and because some are too loose and others are too tight, it is causing quality problems with the vehicles he is servicing.

## Is it performance or is it conduct?

A Public Affairs Officer was given a project to research and write about historical landmarks of the Army Corps of Engineers. The employee does have a broad performance element about completing reports and studies. The employee procrastinated and missed the deadline given by his supervisor.

## Is it performance or is it conduct?

A GS-12 Claims Examiner examines disability claim files and makes disability ratings that determine entitlement for veterans or their dependents. She does about sixty cases a month. Her supervisor is concerned about the quality of her work. When her supervisor reviewed the case files of the employee, she found that over half the cases contained errors in judgment where the employee misapplied the rules.

## Is it performance or is it conduct?

A Licensed Nurse with ten years experience at a VA hospital was moving a patient from a bed to a wheelchair by himself. As he was moving the patient, the patient slipped to the floor and bruised his hip. The hospital procedures call for two people to move patients from beds to wheelchairs.

## Is it performance or is it conduct?

Marie has been late for work five times in the last month, and was late again today. Another person was asked to prepare documents that had to be done immediately for an important meeting. This is the second time this month that someone else has had to complete Marie's work because of her late arrival.

# Probationary Employees

- The probationary period is a tool to assess an employees skills, demeanor, and attitude related to their work.
- The probationary period is generally 1-year in length, but may vary in some circumstances.
- Previous time within the same line of work or within the same Agency, counts towards the probationary period.
- Probationary period CANNOT be extended unless employee is in a non-pay status for more than 22 continuous workdays.



# Probationary Employees

- All employee must be working under elements and standards.
- Even though probationary employees can be removed, supervisors should be encourage to provide sufficient documentation to substantiate terminating employee.
- Employee has the right to any documentation relied upon in the Agency's decision to terminate.
- While probationary employees do not have appeal rights to the Merit Systems Protection Board, they can still file an EEO claim or other claim.
- Encourage supervisors to make these determinations on a continuous basis, and not just at the end of the year of service.

# Probationary Employees

- Employee must be off Agency rolls prior to the end of the WORKDAY BEFORE the anniversary date.
- Be aware of non-duty days and holidays when making these calculations.



# Supervisory Probation

- Supervisors also serve a probationary period of one year as a supervisory employee.
- Generally, if the individual is not successful in the supervisory role, they can be reassigned to a non-supervisory role within the probationary period without appeal rights, so long as they do not lose pay or grade.
- If the reassignment from supervisory duties results in a loss of pay or grade, then the procedural requirements apply.

# PERFORMANCE

# PERFORMANCE MANAGEMENT

- What Are Performance Elements and Standards?
- What is a Performance Problem?
- What Options Are There for Dealing With Performance Problems?



# PERFORMANCE

The regulations that govern performance based actions are found in:

5 USC Chapter 43

&

5 CFR Part 432

# PERFORMANCE

## ELEMENTS AND STANDARDS

- Every job has elements and, for each element, written standards of performance.
- Every job must have at least one *critical element*.
- A critical element is a work assignment or responsibility of such importance that unacceptable performance of the element would result in a determination that the employee's overall performance is unacceptable.
- Most jobs have more than one critical element.
- A job may include *non-critical* elements, but they are not required.

# PERFORMANCE

## ELEMENTS AND STANDARDS

Performance standards must, to the extent possible, permit accurate evaluation of job performance on the basis of being:

- (1) **Objective** (tied to performance rather than traits)
- (2) **Measurable** (generally described in terms of quality, quantity, timeliness, or manner of performance), and
- (3) **Reasonable** (i.e. attainable) job-related criteria.
- (4) **Aligned** (tied to agency mission or goals).



# PERFORMANCE MANAGEMENT

- Managers should be observant of their employees' performance. One way to do this is through performance counseling.
- Managers should provide continuous feedback to employees regarding their performance.
- A supervisor should address unacceptable performance at any time that performance in a critical element is unacceptable.
- The goal is correct the problem at the earliest stage possible through good communication.

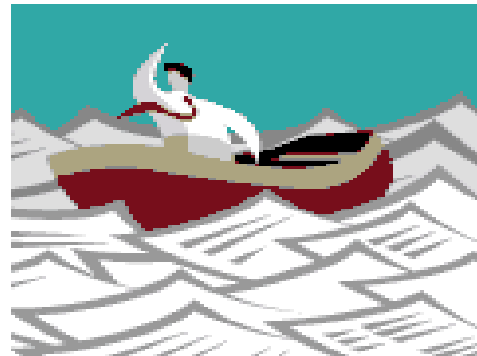
# PERFORMANCE

Poor performance may result from many different causes:

- Lack of ability
- Lack of effort
- Lack of attention
- Lack of basic knowledge
- Lack of judgment
- Problems outside of work



# ADDRESSING POOR PERFORMANCE



# PERFORMANCE

## **Performance Counseling - How to advise a supervisor on arranging the meeting:**

- Always discuss incidents involving poor performance of critical elements with employees.
- Do not wait and allow incidences of poor performance to accumulate without discussing it.
- Find a private place, free of interruptions, to hold the discussion.
- Provide adequate time to discuss the issues.
- Clearly identify the purpose of the meeting (bargaining unit employees are not automatically entitled to representation at performance meetings)

# PERFORMANCE

**Performance counseling – How to advise a supervisor on conducting the meeting:**

**Identify-** the Problem/Issue. Be Specific!

**Listen** - to the employee's explanation or potential solutions.

**Decide** -on corrective actions. Inform the employee specifically what they must do in the future to improve

**Document-** the Discussion

# PERFORMANCE IMPROVEMENT PLANS (PIP)

**When performance counseling is ineffective and a PIP is used to help the employee improve their performance to an acceptable level, the PIP Must Include:**

- Notice to the employee that his/her performance is unacceptable
- The element(s) in which performance is unacceptable
- What the employee must do to demonstrate acceptable performance
- The specific assistance that will be provided to help the employee, if any
- The timeframe of the performance improvement period
- The actions that may be initiated if the performance does not improve to the fully successful level

# PERFORMANCE- PIP's

## Closing out a PIP in which the employee was successful:

- The employee receives a letter indicating that they have successfully satisfied the requirements of the PIP.
- The employee must continue the satisfactory level of achievement for one full year after the ending date of the PIP, otherwise actions can be initiated without restarting the PIP process.

# PERFORMANCE- PIP's

Closing out a PIP in which the employee was NOT successful:

Must result in a letter notifying the employee one of the following:

- Reduction in grade
- Reassignment
- Removal

\*Suspensions are not a possibility under 5 CFR 432



# PERFORMANCE- PIP's

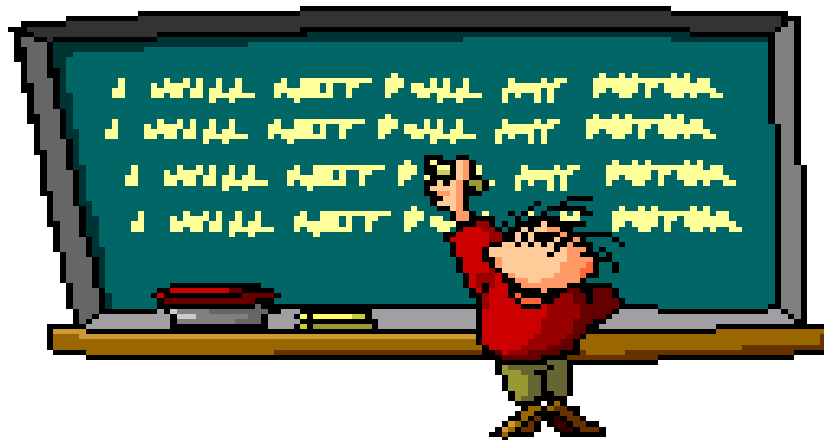
## An ER Specialists Checklist:

- ☐ Have the performance standards been communicated to the employee?
- ☐ Are the standards clear and reasonable?
- ☐ Have you reviewed the standards for any possible problems?
- ☐ Has the supervisor told the employee what critical elements he or she is failing?
- ☐ Has the supervisor counseled the employee on how to improve to an acceptable level?
- ☐ Has the supervisor provided the employee with the necessary tools and support to improve to an acceptable level?

# PERFORMANCE

Do NOT Stop Conduct based discipline

Continue to take discipline for conduct issues while  
addressing performance issues!

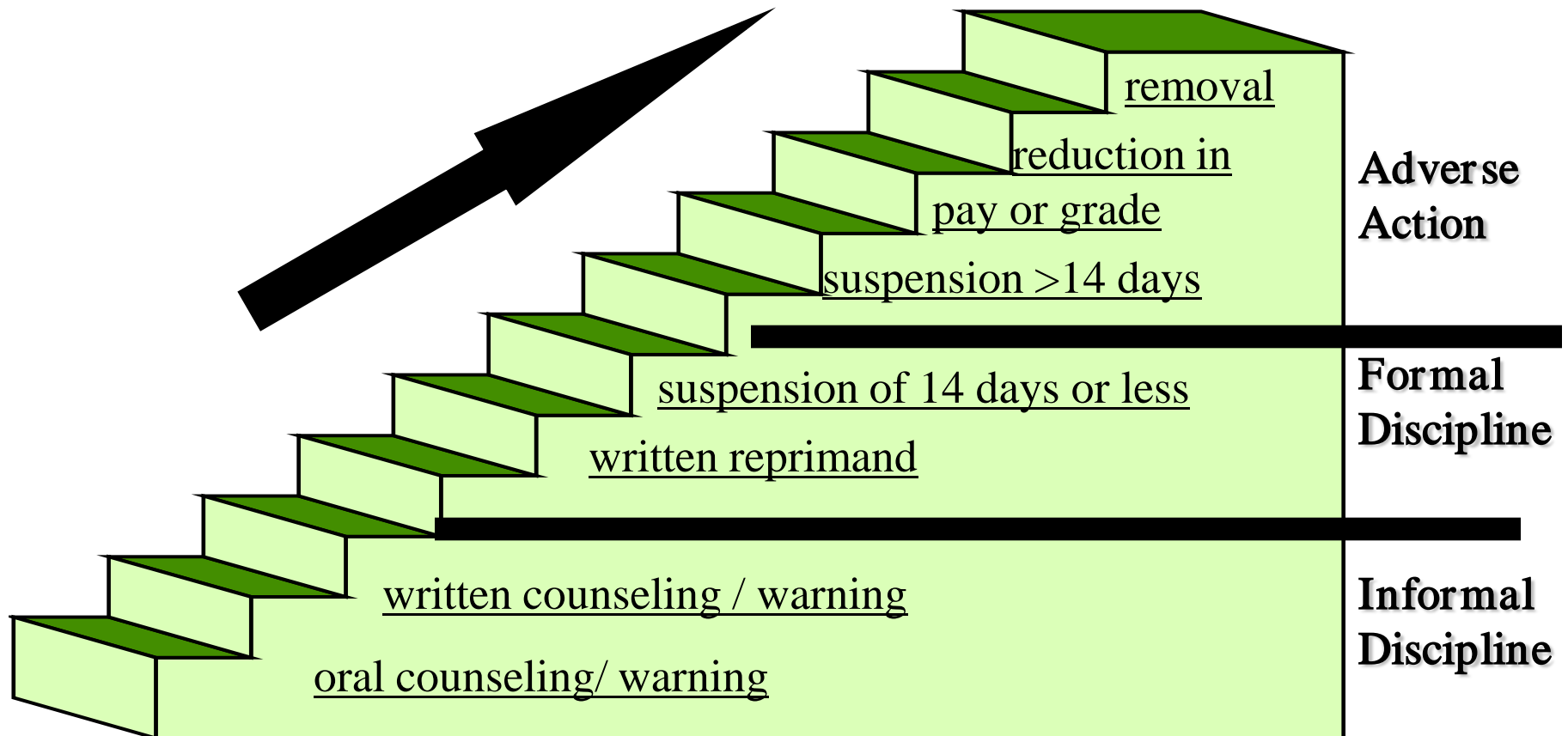


# CONDUCT & DISCIPLINE

# Why Take a Disciplinary Action?

- The only reason to take a disciplinary action is to correct the behavior of the employee.
  - Discipline is not intended as a tool for management to ‘set an example’ for other employees.
  - The action should never be greater than that needed to correct behavior.
  - Discipline should never be used to ‘punish’ the employee - it is intended to be a corrective action.

# Progressive Discipline



# The Process

- Allegations of misconduct
- Investigation
- Notice of Proposed Disciplinary or Adverse Action
- Employee's Response
- Final Disciplinary or Adverse Action Decision

# Elements of Discipline

- Evidence Establishing Misconduct
- Nexus between the Misconduct and the Efficiency of the Service
- Reasonable Penalty

# Effective Fact-Finding

Although it is not necessary to spend a considerable amount of time planning an investigation, it is important to take the time necessary to recognize the type of situation you are dealing with, and to organize your approach appropriately.





# Conducting Effective Fact Finding

- Encourage managers to give you specific information (The 4 W's).
- Prepare supervisors to conduct Interviews.
- Have the supervisor or other appropriate investigator conduct the interview
- Remind the supervisor to document, document, document



# DOCUMENT, DOCUMENT, DOCUMENT

...then document some more

- Document promptly, while memories are still fresh.
- Indicate the date, time, and location of the incident(s), along with names of persons involved and witnesses.
- Record the behavior exhibited.
- Make sure that the supervisor is objective and records observations and not impressions.
- Anything that is part of the written record may be releasable to the union or employee under FOIA or discovery.
- Remind the supervisor to note their response to the action or behavior, even if it was not the 'best' response.

# Weingarten Rights

- An employee in a bargaining unit has the right to have their exclusive representative present during investigatory meetings held by representatives of the agency, if they have a reasonable belief that the investigation may result in disciplinary action against them.(5 U.S.C. §7114(B))
- This right applies to individuals who are the subject of an investigation as well as any witnesses.

# Weingarten Rights

- Advise management officials to never promise the employee that discipline will not result from the investigation – the reason that they are investigating is to find out what happened – the employee being questioned may have been involved.
- ‘Representatives of the Agency’ include other entities of the Agency or Department such as IG or Department level investigators, but does not include other law enforcement agencies such as state or local police, FBI etc.

# What if an employee refuses to cooperate in the investigation?

- Unless the information is going to be used for criminal prosecution, there is no right to remain silent. (*Kalkines v. United States*, 473 F.2d 1391 (Ct. Cl. 1973))
- Even if an employee is not fully warned, the right to remain silent only applies if the employee has a reasonable basis to believe that criminal prosecution could result. (*Ashford v. DOJ*, 6 MSPR 466 (1981))
- If an employee is forced to answer incriminating questions under penalty of disciplinary action, the answers cannot be used in a criminal proceeding. (*Garrity v. New Jersey*, 385 U.S. 493 (1967))

# What's the nexus?

There must be a clear and direct relationship between the reasons for the disciplinary action and misconduct:

- 1) affects the employee's or co-workers performance; or
- 2) affects management's trust and confidence in the employee's job performance; and
- 3) interferes with or adversely affects the agency's mission.



# Nexus or Not?

In the parking lot of a downtown bar where he had been drinking since leaving work, a security officer discharges four rounds from his service revolver into his stalled auto.

# Nexus or Not?

According to the police log in a local newspaper, a supply clerk was arrested over the weekend for DUI. The brief paragraph does not mention the individual's employer.



# Nexus or Not?

The Director of Budget pleads  
guilty to theft by deception.

The plea resulted from a charge of  
passing bad checks at a local store.

# Nexus or Not?

A forklift operator is cited for disorderly conduct by local police following an off-duty altercation with his neighbor in which no one was injured.

# Nexus or Not?

The chief counsel is involved in a minor auto accident on her way home from work. Police determine she is at fault and issue a citation for failing to yield the right of way.

# Nexus or Not?

A Personnel Assistant is charged  
with aggravated assault  
after injuring his mother  
in a domestic dispute.

# Nexus or Not?

During a game of volleyball at the annual employee appreciation day picnic, a budget analyst initiates a shoving and shouting match with her supervisor who is playing on the opposing team.

# Nexus or Not?

An employee takes his 16-year old daughter to work on 'Teach Your Kid Employment Skills Day' and allows her to drive a GOV across the base to a government sponsored 'TYKES Day' event.

# Discipline – Formal or Informal?

- Was the employee aware that the behavior in question was wrong?
- If behavior is inherently wrong (e.g., striking a supervisor or coworker), **formal action** may be the most appropriate response.
- In those cases in which the behavior is not obviously or inherently wrong (e.g., taking a break in excess of 10 minutes), **informal action** is often more appropriate, at least as a first step. It may be all that is necessary to correct minor problems.

# Discipline – Formal or Informal

- Oral Admonishment/ verbal counseling: If the employee has not been previously warned or advised that behavior conflicts with a workplace rule, an oral admonishment is often sufficient.
- If the behavior recurs, repeated oral admonishments are seldom effective. At that point it's usually better to progress to either a letter of warning or to formal disciplinary action.



# Discipline – Formal or Informal

- We put a warning in writing to make the employee realize the supervisor means business -- not to create proof for a third party.
- A letter of warning and instruction is most likely to be successful if:
  1. The supervisor gives the disciplinary letter during a face-to-face discussion with the employee.
  2. The employee has an opportunity to raise any legitimate questions.
  3. The supervisor properly documents the conversation.



# Discipline – Formal or Informal

- A further distinction is usually drawn between disciplinary actions and adverse actions.
- “Disciplinary action” usually applies to Letters of Reprimand through suspensions of 14-days or less.
- “Adverse action” is applied to all suspensions in excess of 14-days as well as demotions and removals.



# How do you determine a penalty?

- Consider the totality of the circumstances.
- Always seek to impose the lowest level of discipline that will achieve desired results.
- Be consistent with other disciplinary actions.
- Use progressive discipline, where appropriate.



# Aggravating and Mitigating Factors

- While like offenses should result in like penalties, no two cases are exactly the same.
- For that reason, there are a number of factors to consider in proposing and deciding on the proper disciplinary action to take.
- The factors are commonly referred to as the 'Douglas Factors', but they are NOT an all inclusive list.

# Aggravating and Mitigating Factors

There are numerous factors to consider such as:

- The nature and seriousness of the offense.
- The employee's job history.
- Consistency of the penalty imposed.
- The notoriety of the offense.
- The clarity with which the employee was on notice.
- Potential for the employee's rehabilitation.

# Preparing the Proposed Action

Summary steps to consider in framing a charge:

1. Analyze the misconduct carefully.
2. Identify & review the evidence.
3. List each potential offense.
4. Review relevant Agency policies, if any.
5. Draft initial charges.
6. Ensure draft charges state individual offenses.
7. Ensure each element of the charge can be proven.
8. Consider aggravating and mitigating factors.



# Preparing the Decision Letter

Summary steps for the deciding official to consider in reaching a decision:

- 1) Analyze the misconduct carefully.
- 2) Review the evidence.
- 3) Carefully consider any response and evidence provided by the employee.
- 4) Ensure each element of the charge has been proven.
- 5) Review and consider relevant aggravating and mitigating factors regarding the penalty with the deciding official.



# Employee Relations Millionaire



Which of the following is not considered an 'adverse action'?

A. 10-day suspension

B. Removal

C. Demotion

D. 30-day suspension

8,000



# Employee Relations Millionaire

Which of the following is not considered an 'adverse action'?

A. 10-day suspension

B. Removal

C. Demotion

D. 30-day suspension

# Employee Relations Millionaire



Which of the following is not considered 'informal' discipline?

A. Letter of Reprimand

B. Letter of caution/  
counseling letter

C. Oral warning

D. Oral counseling session

16,000

# Employee Relations Millionaire

Which of the following is not considered 'informal' discipline?

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B. Letter of caution/  
counseling letter

C. Oral warning

D. Oral counseling session

# Employee Relations Millionaire

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A leave restriction letter is an example of...?

A. A disciplinary action

B. A non-disciplinary action

C. An adverse action

D. A criminal action

32,000

# Employee Relations Millionaire

A leave restriction letter is an example of...?

A. A disciplinary action

**B. A non-disciplinary action**

C. An adverse action

D. A criminal action

# Alternative Discipline Techniques

- How a supervisor chooses to discipline employees -- be it counseling, letters of reprimand, suspension or termination -- could have a major impact on an agency's budget and productivity.
- In some cases you should discuss options with the supervisor -- last-chance agreements, mediated solutions, and settlements, in-lieu-of suspension letters and/or removals.

# Alternative Discipline Techniques

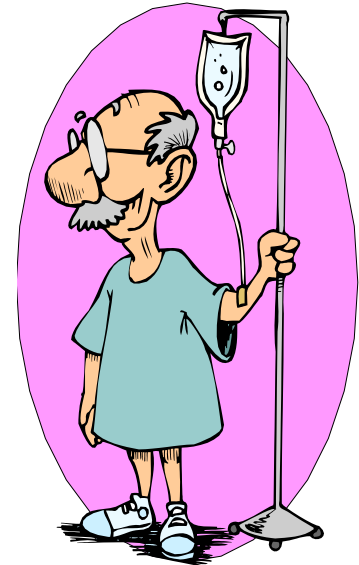
## Employee Assistance Program (EAP)

- EAP is a voluntary, confidential counseling service provided to employees who are experiencing problems both on and off the job
- EAP provides counseling services for emotional, financial, family, alcohol/drug addiction, etc.



# Medical Conditions

- Do not excuse misconduct.
- Can mitigate the penalty imposed for the misconduct.
- Disclosure could lead to need to accommodate.
- Employees cannot be compelled to disclose medical information in most cases, but failure to disclose may result in an inability to assist them to succeed.





# Employee Forums

- Administrative Grievances
- Negotiated Grievance Procedures
- Alternative Dispute Resolution
- Merit Systems Protection Board
- Equal Employment Opportunity Commission
- Office of Special Counsel (OSC)



- \* Generally the employee needs to elect one of these options once they have decided to challenge the action taken.

# Employee Forums

## Administrative Grievance System

Is a method for management and employees to handle disputes and disagreements quickly and as equitably as possible and at the lowest level possible.



# Employee Forums

## Negotiated Grievance Procedure

Is a method for the union and management to handle disputes and disagreements quickly and as equitably as possible and at the lowest level possible. Procedure is set forth in your Agency's collective bargaining agreement.

# Employee Forums

## Alternative Dispute Resolution

Often times through the use of an ombudsman or mediator, this is an employee resource for resolving conflicts at an early stage, before they turn into grievances, personnel actions and complaints.



# Employee Forums

## Merit Systems Protection Board (MSPB)

A formal appeals process where employees can appeal an Agency's action in a courtroom setting to an Administrative Judge so that a decision can be rendered by the independent third party review process.



# Employee Forums

## Equal Employment Opportunity Commission

The EEOC investigates discrimination complaints based on an individual's race, color, national origin, religion, sex, age, disability and retaliation.



# Employee Forums

## Office of Special Counsel

An independent federal investigative and prosecutorial agency whose basic legislative authority comes from three federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act and the Hatch Act. Its primary mission is to protect federal employees and others from prohibited personnel practices.



\$\$\$\$\$

***THE ONE MILLION  
DOLLAR  
QUESTION!!!***



# Employee Relations Millionaire

50:50



What should an Employee Relations Specialist refer to in determining what disciplinary action is appropriate?

A. Past disciplinary actions

B. Aggravating/mitigating factors

C. Applicable agency policy

D. All of the above

# Employee Relations Millionaire

50:50



What should an Employee Relations Specialist refer to in determining what disciplinary action is appropriate?

A. Past disciplinary actions

B. aggravating/mitigating factors

C. Applicable agency policies

D. All of the above

# ***“Who Wants to be a Millionaire?”***



As an ER expert,  
you're worth  
more than a  
million!

# Questions and Answers

# Thank you for attending!

